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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,227	06/26/2003	William E. Spindler	WC10002.US	5896

7590

10/06/2006

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EXAMINER

CARRILLO, BIBI SHARIDAN

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,227

Applicant(s)

SPINDLER, WILLIAM E.

Examiner

Sharidan Carrillo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer et al. (5320805).

Kramer teaches a method of cleaning food processing plants using a composition having an alkaline water soluble salt (i.e. sodium carbonate) and hydrogen peroxide (col. 1, lines 10-12, col. 2, lines 13-15, lines 34-39, col. 4, lines 1-12). In reference to pH, refer to col. 5, lines 10-12. In reference to claim 34, refer to col. 2, lines 48-52. In reference to claim 35, Kramer teaches mixing both peroxide and alkaline salt to form a solution (claim 1). In reference to claim 36, Kramer teaches that the composition may be applied as a bulk powder (col. 3, lines 63-65, col. 8, lines 1-3).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 33-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramirez et al. (US2003/0078178).

Ramirez teaches a method of cleaning equipment in food processing industries by treating with an alkaline pH cleaning solution comprising peroxide and an alkaline reagent (i.e. hydroxide, silicate, phosphate, carbonate, paragraph 43, abstract). In reference to "consisting essentially of" refer to paragraph 43. In reference to the pH, refer to paragraph 49. In reference to claim 34 and in view of the indefiniteness, refer to the abstract and paragraph 18. In reference to claim 35, the limitations of different containers are inherently met since paragraph 49 teaches preparing a liquid solution by mixing a series of ingredients.

Response to Arguments

5. The rejections of the claims, under 112, first and second paragraphs, are withdrawn in view of the newly amended claims and arguments presented by applicant.

6. Applicant argues that Kramer and/or Ramirez fails to teach a cleaning compound consisting essentially of hydrogen peroxide and an alkaline reactant including at least one of carbonates, phosphates, silicates, borates or hydroxides. Applicant's arguments are unpersuasive because "consisting essentially of" language renders the composition open to the inclusion of unspecified ingredients which do not materially affect the basic and novel characteristics of the composition, see *Ex parte Davis et al.* (Bd of Appeals), 80 USPQ 448. If applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of

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showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. In re De Lajarte, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). See also Ex parte Hoffman, 12 USPQ2d 1061, 1063-64 (Bd. Pat. App. & Inter. 1989). Applicant has not met that burden, and therefore, applicant's arguments are unpersuasive.

7. Applicant argues that the materials used by Kramer are selected to provide a synergistic enhancement of the decontaminant and disinfection properties of the quaternary ammonium salt. Applicant's arguments are unpersuasive since the carbonate in combination with the hydrogen peroxide perform the same function of cleaning the food processing plant.

8. Applicant argues the cost and reduced corrosive effects of the composition of the instant invention in comparison to the teachings of Kramer and/or Ramirez. Applicant's arguments are unpersuasive because they are not commensurate in scope with the instantly claimed invention.

9. Applicant argues that the cleanser of Ramirez is low-foaming in comparison to the present invention, which is high-foaming. Applicant's arguments are unpersuasive for the following reasons. With respect to claim 34, applicant is claiming a "high-foaming alkaline reactant, applicant is not claiming a "high foaming cleaning compound". Since Ramirez teaches the same alkaline reactant, for example, carbonates and silicates (paragraph 43), the alkaline reactant would inherently be "high-foaming" and as part of a component in a low-foaming composition.

10. Applicant argues that Ramirez fails to teach the cleaning composition applied in a dry state. The rejection of claim 36 as being anticipated by Ramirez has been withdrawn.

11. This application contains claims 1-32 drawn to an invention nonelected with traverse in Paper filed 11/14/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharidan Carrillo whose telephone number is 571-272-

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1297. The examiner can normally be reached on M-W 6:30-4:00pm, alternating Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharidan Carrillo
Primary Examiner
Art Unit 1746

bsc



SHARIDAN CARRILLO
PRIMARY EXAMINER